

SECOND REGULAR SESSION

HOUSE BILL NO. 1888

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GRISAMORE.

5703L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 37.735 and 37.740, RSMo, and to enact in lieu thereof ten new sections relating to advocacy for persons with disabilities with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 37.735 and 37.740, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 37.600, 37.605, 37.610, 37.615, 37.620, 37.625, 37.630, 37.635, 37.735, and 37.740, to read as follows:

- 37.600. As used in sections 37.600 to 37.635, the following terms mean:**
- (1) "Abuse", the willful infliction of physical pain or injury or the willful deprivation of services which are necessary to the person's health or safety;**
 - (2) "Developmental disability", a disability:**
 - (a) Which is attributable to:**
 - a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or a learning disability related to a brain dysfunction; or**
 - b. Any other mental or physical impairment or combination of mental or physical impairments; and**
 - (b) Is manifested before the person attains age twenty-two; and**
 - (c) Is likely to continue indefinitely; and**
 - (d) Results in substantial functional limitations in two or more of the following areas of major life activities:**
 - a. Self-care;**
 - b. Receptive and expressive language development and use;**
 - c. Learning;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 **d. Self-direction;**
18 **e. Capacity for independent living or economic self-sufficiency;**
19 **f. Mobility; and**
20 **(e) Reflects the person's need for a combination and sequence of special,**
21 **interdisciplinary, or generic care, habilitation or other services which may be of lifelong**
22 **or extended duration and are individually planned and coordinated;**
23 **(3) "Director", the director of the office of protection and advocacy for persons**
24 **with disabilities;**
25 **(4) "Facility", any public or private hospital, nursing home facility, training school,**
26 **regional facility, group home, community training home, school or other program serving**
27 **persons with developmental disabilities;**
28 **(5) "Guardian", the guardian or limited guardian of a person with a developmental**
29 **disability appointed under chapter 475, inclusive;**
30 **(6) "Neglect", a situation where a person with a developmental disability either is**
31 **living alone and is not able to provide for himself or herself the services which are**
32 **necessary to maintain his or her physical and mental health or is not receiving such**
33 **necessary services;**
34 **(7) "Office", the office of protection and advocacy for persons with disabilities;**
35 **(8) "Person with a disability", any person who has a physical, mental, emotional**
36 **or other disability or dysfunction which constitutes a significant obstacle to such person's**
37 **ability to function normally in society and includes those persons defined as**
38 **developmentally disabled under Public Law 94-103 and any subsequent amendments**
39 **thereto.**

37.605. 1. There is hereby established within the office of administration the
2 "Office of Protection and Advocacy for Persons with Disabilities", for the protection and
3 advocacy of the rights of persons with disabilities and developmentally disabled persons.
4 2. The operations of the advocacy office shall be administered by a director of
5 advocacy persons with disabilities. The director shall be a person knowledgeable in the
6 problems of persons with disabilities or advocacy and shall be appointed by the governor,
7 with the advice and consent of the senate. The director may employ necessary staff, subject
8 to appropriations, and promulgate rules to implement the provisions of sections 37.600 to
9 37.635. The director shall report directly to the governor and the general assembly.
10 3. The director of advocacy for persons with disabilities shall hold office for a term
11 of six years and shall continue to hold office until a successor has been duly appointed. The
12 director shall act independently of the department of health and senior services,
13 department of social services, the department of mental health, and any other state

14 department or agency which provides disabilities services in this state in the performance
15 of his or her duties. The office of administration shall provide administrative support and
16 staff as deemed necessary.

17 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is
18 created under the authority delegated in this section shall become effective only if it
19 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
20 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
21 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
22 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
23 grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,
24 shall be invalid and void.

37.610. The director of advocacy for persons with disabilities may, within available
2 appropriations:

3 (1) Purchase or contract for necessary services, including but not limited to legal
4 services;

5 (2) Receive and spend moneys in the form of gifts, bequests, state appropriations,
6 or federal, state or private grants in accordance with the purposes of sections 37.600 to
7 37.635;

8 (3) Establish a statewide toll-free telephone information and referral system for
9 persons with disabilities for referral of such persons to appropriate public or private
10 agencies for services. Such information and referral system may be coordinated with other
11 existing and information and referral services;

12 (4) Receive and investigate complaints from persons with disabilities, parents or
13 guardians of such persons, or in writing from any other interested person, act as an
14 advocate for any person with a disability and initiate or fund legal actions to protect the
15 rights of any person with a disability;

16 (5) Request and receive information, including personal data, concerning a person
17 with a disability from any state or private agency, with the oral or written consent of such
18 person with a disability, or the parent or guardian of such person, as appropriate. With
19 respect to developmentally disabled adults who have no guardian or whose guardian is the
20 state, the director may request and receive such information only if:

21 (a) A request for advocacy services has been made on such person's behalf;

22 (b) Such person does not indicate refusal to give consent to receipt of the
23 information by the director;

24 (c) Such person resides in a facility for developmentally disabled persons, including
25 any institution, or has been placed in a boarding home, group home, or other residential
26 facility;

27 (d) Such person has received an explanation of the manner in which any
28 information obtained concerning such person will be used by the office;

29 (e) Such person has received an explanation of such person's right to refuse to allow
30 the director to request or receive such information; and

31 (f) The director has documented the director's conscientious efforts to provide the
32 required explanations and verified that the developmentally disabled person has not
33 indicated refusal to give consent;

34 (6) Coordinate and cooperate with other private and public agencies concerned
35 with the implementation, monitoring, and enforcement of the rights of persons with
36 disabilities and enter into cooperative agreements with public or private agencies for
37 furtherance of the rights of persons with disabilities;

38 (7) Represent, appear, intervene in, or bring an action on behalf of any person with
39 a disability or class of persons, with the consent of such person or the parent or legal
40 guardian of such person, in any proceeding before any court, agency, board, or commission
41 in this state in which matters related to sections 37.600 to 37.635 are in issue;

42 (8) Implement, with the approval of the individual using a service provided by the
43 advocacy office, a case followup system;

44 (9) Research and identify the needs of persons with disabilities, and programs and
45 services available to meet such needs;

46 (10) Develop and maintain a program of public education and information, such
47 program to include but not be limited to:

48 (a) Education of the public concerning the needs and rights of persons with
49 disabilities;

50 (b) In cooperation with existing state and private agencies, an outreach effort to
51 discover persons with disabilities in need of assistance or an advocate; and

52 (c) Provisions of a class or group advocacy service;

53 (11) Develop and maintain an individual advocacy service for persons with
54 disabilities which shall investigate referred problems or complaints;

55 (12) Receive, review and make such recommendations as the director deems
56 appropriate on applications for waivers from the requirements of state building codes;

57 (13) Ensure that all aspects of agency operations conform to federally established
58 protection and advocacy requirements for program independence and authority,
59 including:

- 60 (a) Structural independence from other agencies which provide services to people
61 with disabilities;
- 62 (b) Authority to pursue legal and administrative remedies on behalf of persons with
63 disabilities;
- 64 (c) Authority to investigate allegations of abuse and neglect of persons with
65 disabilities who receive care, treatment or services;
- 66 (d) Authority to access persons who are residents of facilities or clients of services
67 systems, and with appropriate consent, to access such residents' records concerning care,
68 treatment or services;
- 69 (e) Authority to educate policy makers, consumers and members of the public
70 about issues affecting persons with disabilities;
- 71 (f) Authority to reach out to members of traditionally underserved populations;
- 72 (g) Authority to develop an annual statement of priorities and objectives and to
73 solicit public comment and input on such process; and
- 74 (h) Compliance with federally established confidentiality requirements; and
- 75 (14) Establish an "Accessibility Advisory Board" with membership comprised of
76 design professionals, persons with disabilities, persons who have family members with
77 disabilities and any other person that the director believes would provide valuable insight
78 and input on matters relating to accessibility. The board shall meet periodically at such
79 times and places as the director designates, to advise the director on accessibility matters
80 relating to housing, transportation, government programs and services, and any other
81 matters deemed advisable by the director or the board.

2 37.615. When the director has reasonable cause to believe that a person with a
3 disability is being or has been abused or neglected, the director shall make a report of such
4 suspected abuse to the appropriate state agency responsible for investigation of suspected
5 cases of abuse or neglect to determine whether the person with a disability has been abused
6 or neglected.

2 37.620. 1. The office shall have access to the following information:

3 (1) The names and physical location of all persons receiving disabilities services
4 from any state program under the jurisdiction of a state department or agency;

5 (2) All written reports of abuse and neglect of persons with disabilities; and

6 (3) All current records required to be maintained by any state department or
7 agency regarding persons with disabilities.

8 2. The office shall have the authority:

9 (1) To communicate privately by any means possible with any person receiving
disabilities services from the state and any person working with such person, including the

10 family, relatives, courts, employees of state departments and agencies, and other persons
11 or entities providing treatment and services;

12 (2) To have access, including the right to inspect, copy, and subpoena records held
13 by any agency, institution, or entity, public or private, that provides state-funded
14 disabilities services;

15 (3) To file any findings or reports of the director of advocacy for persons with
16 disabilities regarding any person receiving disabilities services from the state with the court
17 or administrative hearing commission or tribunal, and issue recommendations regarding
18 the disposition of an investigation, which may be provided to the court, administrative
19 hearing commission, and the investigating agency;

20 (4) To file amicus curiae briefs on behalf of the interests of persons receiving
21 disabilities services from the state;

22 (5) To initiate meetings with any state department or agency;

23 (6) To take whatever steps are appropriate to see that persons with disabilities are
24 made aware of the services of the office of protection and advocacy for persons with
25 disabilities, its purpose, and how it can be contacted;

26 (7) To apply for and accept grants, gifts, and bequests of funds from other states,
27 federal, and interstate agencies, and independent authorities, private firms, individuals,
28 and foundations to carry out his or her duties and responsibilities. The funds shall be
29 deposited in a dedicated account established within the office to permit moneys to be
30 expended in accordance with the provisions of the grant or bequest; and

31 (8) Subject to appropriation, to establish as needed local panels on a regional or
32 county basis to adequately and efficiently carry out the functions and duties of the office,
33 and address complaints in a timely manner.

34 3. For any information obtained from a state agency or entity under sections 37.600
35 to 37.635, the office shall be subject to the same disclosure restrictions and confidentiality
36 requirements that apply to the state agency or entity providing such information to the
37 office. For information obtained directly by the office under sections 37.600 to 37.635, the
38 office shall be subject to the same disclosure restrictions and confidentiality requirements
39 that apply to a state agency regarding information obtained during an abuse and neglect
40 investigation resulting in an unsubstantiated report.

37.625. 1. The office shall establish and implement procedures for receiving,
2 processing, responding to, and resolving complaints made by or on behalf of persons with
3 disabilities who are recipients of state disabilities services. Such procedures shall address
4 complaints relating to the actions, inactions, or decisions of providers or their

5 representatives, public or private welfare agencies, social service agencies, or the courts
6 which may adversely affect the health, safety, welfare, or rights of such recipient.

7 2. The office shall establish and implement procedures for the handling and,
8 whenever possible, the resolution of complaints.

9 3. The office shall have the authority to make the necessary inquiries and review
10 relevant information and records as the office deems necessary.

11 4. The office may recommend to any state or local agency changes in the rules
12 adopted or proposed by such state or local agency which adversely affect or may adversely
13 affect the health, safety, welfare, or civil or human rights of any recipient. The office shall
14 make recommendations on changes to any current policies and procedures. The office
15 shall analyze and monitor the development and implementation of federal, state and local
16 laws, regulations and policies with respect to services in the state and shall recommend to
17 the department, courts, general assembly, and governor changes in such laws, regulations
18 and policies deemed by the office to be appropriate.

19 5. The office shall inform recipients, their guardians or their families of their rights
20 and entitlements under state and federal laws and regulations through the distribution of
21 educational materials.

22 6. The office shall annually submit to the governor, the general assembly, and the
23 Missouri supreme court a detailed report on the work of the office of protection and
24 advocacy for persons with disabilities. Such report shall include, but not be limited to, the
25 number of complaints received by the office, the disposition of such complaints, the
26 number of recipients involved in complaints, the state entities named in complaints and
27 whether such complaints were found to be substantiated, and any recommendations for
28 improving the delivery of services to reduce complaints or improving the function of the
29 office.

37.630. 1. Any files maintained by the advocate program shall be disclosed only at
2 the discretion of the director; except that the identity of any complainant or recipient shall
3 not be disclosed by the office unless:

4 (1) The complainant or recipient, or the complainant's or recipient's legal
5 representative, consents in writing to such disclosure; or

6 (2) Such disclosure is required by court order.

7 2. Any statement or communication made by the office relevant to a complaint
8 received by, proceedings before, or activities of the office and any complaint or information
9 made or provided in good faith by any person shall be absolutely privileged and such
10 person shall be immune from suit.

11 **3. Any representative of the office conducting or participating in any examination**
12 **of a complaint who knowingly and willfully discloses to any person other than the office,**
13 **or those persons authorized by the office to receive it, the name of any witness examined**
14 **or any information obtained or given during such examination is guilty of a class A**
15 **misdemeanor. However, the office conducting or participating in any examination of a**
16 **complaint shall disclose the final result of the examination with the consent of the recipient.**

17 **4. The office shall not be required to testify in any court with respect to matters**
18 **held to be confidential in this section except as the court may deem necessary to enforce the**
19 **provisions of sections 37.600 to 37.635, or where otherwise required by court order.**

20 **5. The director of the office of protection and advocacy for persons with disabilities**
21 **is authorized to enter into memorandums of understanding with state agencies regarding**
22 **the disclosure and sharing of information in accordance with the federal Health Insurance**
23 **Portability and Accountability Act of 1996 (HIPAA), as amended, without requiring**
24 **written consent for the release of such information.**

37.635. 1. Any employee or an unpaid volunteer of the office shall be treated as a
2 **representative of the office. No representative of the office shall be held liable for good**
3 **faith performance of his or her official duties under the provisions of sections 37.600 to**
4 **37.635 and such representative shall be immune from suit for the good faith performance**
5 **of such duties. Every representative of the office shall be considered a state employee**
6 **under section 105.711.**

7 **2. No reprisal or retaliatory action shall be taken against any recipient or employee**
8 **of the departments or courts for any communication made or information given to the**
9 **office. Any person who knowingly or willfully violates the provisions of this subsection is**
10 **guilty of a class A misdemeanor.**

37.735. 1. The "Governor's Council on Disability" is hereby assigned to the office of
2 **administration.**

3 **2. The council shall consist of a chairperson, twenty members, and an executive director.**

4 **3. The chairperson shall be appointed by the governor with the advice and consent of the**
5 **senate. The members of the council shall be appointed by the governor. Recruitment and**
6 **appointment of members to the council shall provide for representation of various ethnic, age,**
7 **gender, and physical and mental disability groups.**

8 **4. The funds necessary for the executive director and such other personnel as necessary**
9 **shall be appropriated through the office of administration. The executive director shall serve**
10 **under the supervision of the committee [chairman] chairperson. The executive director shall**
11 **be exempted from the state merit system.**

12 5. All members shall be appointed for four-year terms. Vacancies occurring in the
13 membership of the council for any reason shall be filled by appointment by the governor for the
14 unexpired term. Upon expiration of their terms, members of the council shall continue to hold
15 office until the appointment and qualification of their successors. No person shall be appointed
16 for more than two consecutive terms, except that a person appointed to fill a vacancy may serve
17 for two additional successive terms. The governor may remove a member for cause.

18 6. Members of the council shall be chosen to meet the following criteria:

19 (1) The majority of the council shall be comprised of people with disabilities,
20 representing the various disability groups. The remaining positions shall be filled by family
21 members of people with disabilities, persons who represent other disability-related groups, and
22 other advocates. A person considered to have a disability shall meet the federal definition of
23 disability as defined by P.L. 101-336;

24 (2) The council shall include at least one member from each congressional district;

25 (3) Members of the council shall be knowledgeable about disability-related issues and
26 have demonstrated a commitment to full participation of people with disabilities in all aspects
27 of community life.

28 7. The chairperson of the council shall serve without compensation but shall be
29 reimbursed for actual and necessary travel and other expenses incurred in the performance of the
30 duties as chairperson of the council on disability. The members of the council shall serve
31 without compensation but may be reimbursed for their actual and necessary expenses incurred
32 in attending all meetings provided for by sections 37.735 to 37.745.

33 8. The council shall meet at least once each calendar quarter to conduct its business. The
34 executive director shall give notice to each member of the time and place of each meeting of the
35 council at least ten days before the scheduled date of the meeting, and notice of any special
36 meeting shall state the specific matters to be considered in the special meeting which is not a
37 regular quarterly meeting.

38 9. The chairperson, with the advice and consent of the council, shall appoint an executive
39 director who shall serve as a nonvoting member and executive officer of the council. The
40 executive director shall serve under the supervision of the chairperson of the council. The
41 executive director shall be a person who is knowledgeable about disability-related issues and has
42 demonstrated a commitment to full participation of people with disabilities in all aspects of
43 community life.

44 10. The director of each state department **and the director of the office of protection**
45 **and advocacy for persons with disabilities established under sections 37.600 to 37.635** shall
46 designate at least one employee who shall act as a liaison with the council.

37.740. The governor's council on disability, **in cooperation with the office of protection and advocacy for persons with disabilities**, shall:

(1) Act in an advisory capacity to all state agencies and have direct input to all divisions of the office of administration on policies and practices which impact people with disabilities. Input shall include policies and practices affecting personnel, purchasing, design and construction of new facilities, facilities management, budget and planning and general services. In the administration of its duties, the governor's council on disability in cooperation with the office of administration shall offer technical assistance to help all departments, divisions and branches of state government comply with applicable state and federal law regarding persons with disabilities;

(2) Work and cooperate with other state commissions, councils or committees pertaining to disabilities and other national, state and local entities to create public policies and encourage system changes which eliminate barriers to people with disabilities;

(3) Advocate for public policies and practices which:

(a) Promote employment of people with disabilities;

(b) Expand opportunities in all aspects of life; and

(c) Promote awareness of and compliance with various federal, state and local laws dealing with disabilities;

(4) Gather input from disability-related organizations and the public on disability-related issues and report the results of this information in council reports to the governor;

(5) Accept grants, private gifts, and bequests, to be used to achieve the purposes of sections 37.735 to 37.745;

(6) Promulgate those bylaws necessary for the efficient operation of the council;

(7) Prepare an annual report to be presented to the governor not later than January first of each year.

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